



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Automation Management Consultants Incorporated
File: B-231986
Date: November 21, 1988

DIGEST

1. Information disseminated during the course of a procurement that is in writing, signed by the contracting officer, and sent to all offerors, meets all of the "essential elements" of a solicitation amendment and will therefore bind both the offerors and the agency.
2. Offerors must be given sufficient detail in an RFP to allow them to compete intelligently on a relatively equal basis. Where the specifications are not free from ambiguity and do not describe the contracting agency's minimum needs accurately, the solicitation should be corrected and reissued.

DECISION

Automation Management Consultants Incorporated (AMCI) protests the continuance of the procurement process under request for proposals (RFP) RFP-TC-88-002, issued by the United States International Trade Commission (ITC). The RFP is for a firm-fixed price task order contract for training ITC personnel in the use of personal computers and compatible software. AMCI contends that conflicting specifications resulted in an ambiguous solicitation such that AMCI could not adequately prepare a proposal.

We sustain the protest.

The RFP was issued on May 10, 1988, and was followed by the issuance of five amendments. The answers to questions submitted by prospective offerors were attached to three of the amendments. These questions and answers created inconsistencies with respect to the specifications.

The procuring agency states that these questions and answers were merely for clarification and were not intended to revise the RFP. However, we have held that information

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disseminated during the course of a procurement that is in writing, signed by the contracting officer, and sent to all offerors, meets all of the "essential elements" of a solicitation amendment and will therefore bind both the offerors and the agency. See e.g., General Electric Canada, Inc., B-225996, May 5, 1987, 87-1 CPD ¶ 474. Because these questions and answers meet this standard, we find they became a part of the RFP and offerors were entitled to rely on the information contained therein.

Section C.5(b) of the Statement of Work in the RFP, as originally issued, read as follows:

"(b) With technology changing from day-to-day, requirements for additional software training are likely to occur. The Contractor must provide required additional training 30 workdays after the Government provides the proposed course outline."

The answer to question 18, attached to amendment 0001, regarding this section reads as follows:

"Please note, Section C.5(b) has been revised to read: With technology changing from day-to-day, requirements for additional software training are likely to occur. The Contractor must provide required additional training within forty-five (45) workdays after the Government provides a proposed course outline."

In the same amendment, question 21 and the corresponding answer read as follows:

"21. Question

Section C.5(b): 'additional training' as required 30 days after proposed outline from Government.

Answer:

The contractor shall provide 'additional training' 30 days after a task order has been issued by the Government outlining such changes."

In response to question 36, the agency stated: "In regard to the 30 work day development timeframe, this requirement is not negotiable."

The agency in its report on the protest, states that the answer to question 18 (45 days) was in error, and its requirement remains 30 days for course development.

While ITC may have known what it wanted, this was not conveyed to the offerors, especially in view of the statement in the answer to question 18 that this was a revision of section C.5(b). Moreover, while ITC states that any inconsistencies did not impact on price, we find this clearly could have such an impact on an offeror's staffing, (i.e., having to revise a course in 30 days vs. 45 days). This basis of protest is sustained.

Next, AMCI protests that the solicitation was unclear as to how much notice would be given the contractor by the government regarding the exercise of the option years. The RFP was for 1 year with 2 option years.

Section H.4 of the RFP stated that 60 days notice would be given by the government. Sections I.3 and M.3 of the solicitation stated 30 days notice would be given. ITC states this conflict was minor in nature and not corrected by amendment because it was overlooked, but it should not have impaired an offeror's ability to respond.

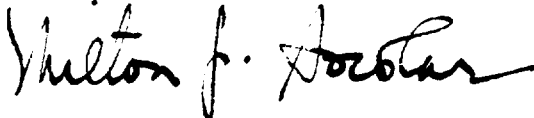
We do not find that the time frame within which the government may exercise an option and bind an offeror to another year's performance to be minor in nature, as such a provision could have an impact on pricing. Therefore, this inconsistency should have been corrected. We also sustain the protest on this ground.^{1/}

Accordingly, we recommend that ITC reissue the solicitation, adequately specifying the contract requirements, to resolve any conflicts between the prior issued RFP, the amendments, and the written questions and answers. In addition, we find that AMCI is entitled to recover the costs of filing and

^{1/} AMCI also initially protested a number of other alleged solicitation ambiguities which the agency specifically addressed in its report. Since AMCI did not respond to or refute the agency's arguments in its comments on the agency report, we consider these issues to have been abandoned. See Front Desk Enterprises, Inc., B-230732, June 23, 1988, 88-1 CPD ¶ 603.

pursuing the protest, since by successfully challenging the conflicting specifications, AMCI has helped enhance the competition under the RFP. See Southern Technologies, Inc., B-224328, Jan. 9, 1987, 87-1 CPD ¶ 42. AMCI should submit its claim to ITC.

The protest is sustained.

for 
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of the United States